



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hatch & Fortwangler, Inc.--Reconsideration

File: B-244752.2

Date: September 25, 1991

Richard J. Hatch for the protester.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Request for reconsideration of decision dismissing protest as untimely is denied where General Accounting Office (GAO) has learned that protester was a prospective subcontractor; GAO does not consider subcontractor protests except in circumstances that do not exist here.

DECISION


Hatch & Fortwangler, Inc. (H&F) requests reconsideration of our decision, Hatch & Fortwangler, Inc., B-244752, July 17, 1991, 91-2 CPD ¶ 71, in which we dismissed as untimely its protest of award of a contract to Computer Associates International, Inc. (CAI) under request for proposals (RFP) No. CS-91-001, issued by the U.S. Customs Service for database administration and software support. We dismissed H&F's protest because the agency-level protest on which it was based was filed more than 4 months after H&F learned of its basis of protest.

We deny the request.

While it was not a basis for our dismissal, we noted that H&F's protest submissions indicated H&F may have been a prospective subcontractor rather than an actual offeror under the solicitation. After dismissing the protest, we learned that H&F had submitted its initial proposal under a teaming arrangement with two other firms; however, prior to the submission of best and final offers (BAFO), it "restructured" its role in the proposal to that of subcontractor to one of its team members. Thus, H&F ultimately was a prospective subcontractor and not an actual offeror.

Under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551(2) (1988), and our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1991), an interested party for the purpose of filing a protest is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract. Accordingly, we do not consider subcontractor protests, except where the subcontract is "by or for the government," that is, where the government prime contractor conducts the procurement on behalf of the government. 4 C.F.R. § 21.3(m)(10). That is not the case here. H&F argues that it is an interested party to protest award to CAI because it submitted a proposal and its economic interests have been affected by the award to CAI. While H&F may claim some economic interest in the outcome of the procurement because of its subcontract agreement with its team member, it relinquished its status as an actual offeror before BAFOs were due. Consequently, we could not have considered H&F's protest of the award even if the protest had been timely filed, and we will not consider its request for reconsideration. See TLC Sys.--Recon., B-241509.2, Nov. 21, 1990, 90-2 CPD ¶ 417.

The request for reconsideration is denied.


Ronald Berger
Associate General Counsel